



THE AAA® CHECKLIST

To Drafting Alternative Dispute Resolution Clauses for Employment Plan Contracts



The AAA's policy on employment ADR is guided by the state of existing law, as well as its obligation to act in an impartial manner. In following the law, and in the interest of providing an appropriate forum for the resolution of employment disputes, the AAA administers dispute resolution programs that meet the due process standards. The guiding principle in designing a successful employment ADR system is that it must be fair in fact and perception. With its considerable experience in administering and designing employment ADR plans, the AAA offers an informed perspective on how to effectively design ADR systems, as well as what problems to avoid. The AAA encourages:

- Employers to consider the wide range of available options to resolve workplace disputes outside the courtroom.
- A special emphasis be placed on the development of in-house dispute resolution procedures, such as open-door-policies, ombuds, peer review and internal mediation.
- An external mediation component be used to resolve disputes not settled by the internal dispute resolution process.
- Disputes not resolved by the external mediation be arbitrated.

CHECKLIST FOR EMPLOYMENT ARBITRATION PLAN CONTRACTS

To aid drafters of employment arbitration programs, the following checklist is provided. The plan should:

- Include a fair method of cost sharing between the employer and employee, which requires the employer to pay a substantial portion of the administrative fees and the arbitrator's fees to ensure affordable access to the system for all employees. Or, include a statement that fees shall be paid in accordance with the AAA's Employment/Workplace Fee Schedule.
- Specify the qualifications and number of arbitrators.
- Specify the employees to be covered.
- Specify the nature of the claims to be covered.
- Give employees clear notice of their right of representation.
- Consider providing a fair method for reimbursement of at least a portion of the employee's legal fees, especially for lower-paid employees.
- Provide time frames for filing a claim that are consistent with applicable statutes of limitation.



CHECKLIST FOR EMPLOYMENT ARBITRATION PLAN CONTRACTS (Cont.)

- Provide for fair and adequate discovery.
- Allow for the same remedies and relief that would have been available to the parties had the matter been heard in court.
- State clearly that it does not preclude an employee from filing a complaint with a federal, state or other governmental administrative agency.
- Provide adequate notice to employees prior to the plan implementation.
- Ensure that the employment ADR plan is written in a clear and easily understood manner.

Employment ADR plans should be easily understood by all employees. Legal jargon should be avoided or kept to a minimum. **If an employer intends to utilize the dispute resolution services of the AAA in an employment ADR plan, it must, at least thirty (30) days prior to the planned effective date of the plan notify the AAA of its intention to do so and provide the AAA with a copy of the plan for review.**

Given the many variables involved in establishing a sound, responsible employment ADR system that suits the needs of a specific employer and its employees, no one model can be presented as representing the best approach. The AAA has worked with many companies to establish a wide variety of ADR programs that it administers and will make them available to those designing employment ADR programs.

Standard Arbitration Clause – Employment Plan:

Any controversy or claim arising out of or relating to this [Employment application: employment ADR program; employment contract] shall be settled by arbitration administered by the American Arbitration Association® under its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the arbitrator (s) may be entered in any court having jurisdiction thereof.

This checklist has been prepared by the AAA to guide employers and employees in the responsible development and use of alternative dispute resolution (ADR) procedures to resolve workplace disputes. Due process safeguards are critical to any employment dispute resolution program because they provide a fair and equitable forum for both employee and employer.

The AAA developed the ClauseBuilder on-line tool – a simple, self-guided process-to-assist individuals and organizations in developing clear and effective arbitration and mediation agreements.

For further information about the American Arbitration Association's (AAA) Employment services, please visit our website at www.adr.org/employment. To speak with an AAA Representative, please call toll free at 1.888.774.6904.